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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,732	04/18/2008	Sarbjeet Kaur	Q92536	7733

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1781	

NOTIFICATION DATE	DELIVERY MODE
10/06/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/562,732	KAUR ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/30/05, 5/23/08, 7/8/08, and 8/6/10*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *27* is/are allowed.

6)☒ Claim(s) *1-26 and 28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *See Continuation Sheet*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :12/30/05, 5/23/08, 7/8/08, and 8/6/10.

DETAILED ACTION

Claim Rejections - 35 USC § 112, 2nd

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-8, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5-8 are indefinite in that it is not clear whether same set forth optional steps as set forth in claim 1. It is suggested that, for example, claim 5 be amended to begin as follows:"A process according to claim 1 wherein step (d) is employed and wherein the acid soluble lupin protein....." or words to that effect.

Claim 10 is indefinite in that the “food grade organic solvent” lacks antecedent basis. It appears that claim 10 may have been intended to be dependent from claim 5 rather than 1. In any event, for the purpose of examining, said claim has been considered as though dependent on claim 5.

Claim 26 calls for "a process according to claim 21" but claim 21 is related to a product. It appears that Applicant may have intended same to be dependent on claim 1 and the claim has been examined as though this were the case.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, 9, 11-18, 23-25, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by King et al (Journal of Food Science, Vol. 50, 1985).

King et al discloses a process wherein lupin flour undergoes an alkali treatment (pH 8.6) followed by separating refuse from the supernatant (which is essentially the extract of alkali soluble protein called for in step (b) in instant claim 1, the fibrous portion being the refuse), said supernatant then being treated with acid at a pH of, for example, 4.9 wherein a lupin protein extract is precipitated and collected (PF1 as called for in the instant claims; same would be food grade as it is later used in food preparations; see "Conclusions" on page 86). The collected lupin protein extract is then treated to a pH of, for example, 7 and subsequently dried to provide a protein isolate (see page 82, "Preparation of Isolates"; page 83, Fig. 1). King et al further discloses foods which may contain said lupin protein isolates including its use in "milk substitute formulations for nutritional purposes" (see "Conclusions). In addition, the initial alkali step provides not only the extract of alkali soluble protein but also a fraction of residue that is inherently comprising alkali insoluble fibrous material as called for in instant claims 25 and 28.

Although King et al is silent regarding the taste and color of the protein isolate, it is expected that same would inherently possess the attributes of claim 13 due to the similarity in processing between King et al and that used in the instant invention.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al (see above).

Claim 2 and 3 call for the particular ratio of lupin flour to water initially employed in the alkali treatment. Although it appears that King et al employs a small amount of lupin flour, King et al does not limit the ratio. Such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such ratio through routine experimentation to provide, for example, the greatest yield or most efficient processing.

6. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al (see above) taken together with Krinski et al.

Claims 19 and 20 further call for a paper coating that includes said lupin protein extract. Krinski et al teaches the use of lupin protein in adesives used in paper coatings (see "pea protein", col. 3, lines 45 and 46). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the lupin protein extract of King et al in a paper coating as a known use for such material.

7. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al (see above) taken together with Bertram et al.

Claims 21 and 22 further call for a feed that includes said lupin protein extract. Bertram et al teaches the use of lupin protein in animal feeds (e.g. claim 3). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the lupin protein extract of King et al in animal feed as a known use for such material.

Allowable Subject Matter

8. Claim 27 is allowed.

9. Claims 5 -8, 10, and 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The prior art of record and, in particular, the closest prior art, King et al, neither discloses nor teaches further processing of the acid soluble lupin protein component and instead merely discloses same as a supernatant which is expected to be discarded (see Fig. 1). In addition, the prior art of record neither discloses nor teaches the additional step of further treating the alkali insoluble fibrous in the manner recited in claim 26 to produce galactose. As for claim 27, the prior art of record neither discloses nor teaches the step of extracting a fibrous component from lupins as specifically set forth in claim 27 and including the further processing to prepare an insoluble precipitate and hydrocolloid.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1781

/Anthony Weier/
Primary Examiner, Art Unit 1781

Anthony Weier
September 29, 2010